

## 37 Am. Jur. 2d Fraud and Deceit § 77

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### Fraud and Deceit

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#### IV. False Representations

##### B. Necessity that Representation Be of Fact; Opinions

##### 3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

##### b. Where Relation of Trust and Confidence Exists

## § 77. Scope of relationship necessary to give rise to liability

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### West's Key Number Digest

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An expression traditionally considered an opinion may be considered an expression of fact, thereby becoming actionable under a theory of fraudulent misrepresentation, where the relationship of the parties, the extent of reliance, and the opportunity for investigation so warrant.<sup>1</sup> In order to hold one liable for fraud for the expression of an opinion, the relationship between the parties need not be a formal fiduciary or confidential one in all instances, such as the relationship of trustee and cestui que trust. It is sufficient that the representor had superior knowledge,<sup>2</sup> or the representor held him- or herself out as having superior knowledge, and knew that the representee confided in the representor and was guided by the representor's opinion.<sup>3</sup>

#### Caution:

Unlike a fraudulent misrepresentation, the assertion of a confidential or fiduciary relationship may be mandatory when dealing with fraudulent concealment since in such a relationship, the duty to speak is clear, thus making concealment of a material fact fraudulent.<sup>4</sup> Additionally, the existence of a fiduciary or confidential relationship is a mandated element of a claim for constructive fraud.<sup>5</sup> Nonetheless, an exception to the general rule that a prediction or opinion is not a representation of fact on which one is entitled to rely applies where the person making the representation owes the listener a fiduciary duty.<sup>6</sup>

**§ 77. Scope of relationship necessary to give rise to liability, 37 Am. Jur. 2d Fraud and...**

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**Footnotes**

<sup>1</sup> [Veilleux v. National Broadcasting Co., Inc.](#), 8 F. Supp. 2d 23 (D. Me. 1998).

<sup>2</sup> [§ 76.](#)

<sup>3</sup> [Lui Ciro, Inc. v. Ciro, Inc.](#), 895 F. Supp. 1365 (D. Haw. 1995) (applying Hawaii law); [In re Northwestern Mut. Life Ins. Co. Sales Practices Litigation](#), 70 F. Supp. 2d 466 (D.N.J. 1999), [aff'd](#), 259 F.3d 717 (3d Cir. 2001) (applying Alabama law); [Bethlahmy v. Bechtel](#), 91 Idaho 55, 415 P.2d 698 (1966).

<sup>4</sup> [§ 201.](#)

<sup>5</sup> [§ 25.](#)

<sup>6</sup> [Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc.](#), 961 F. Supp. 305 (D.D.C. 1997) (applying District of Columbia law).

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